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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 ESTATE OF JEREMIAH CHASS, MARK
CHASS, YVETTE CHASS, and I.C., a minor,
12 by the through his Guardian Ad Litem,
YVETTE CHASS,

13 Plaintiffs,

14 vs.
15

16 COUNTY OF SONOMA, BILL COGBILL,
in his individual capacity and in his official
17 capacity as Sheriff for the COUNTY OF
SONOMA, SONOMA COUNTY DEPUTY
18 SHERIFF JOHN MISTA, SONOMA
COUNTY DEPUTY SHERIFF JIM RYAN,
19 and DOES 1 through 50,

20 Defendants and Third Party Plaintiff's,

21 vs.

22 SANTA ROSA MEMORIAL HOSPITAL,

23 Third Party Defendant.
24
25
26
27
28

CASE NO: CV 08 0111 MMC

**DEFENDANT SANTA ROSA
MEMORIAL HOSPITAL'S AMENDED
MOTION TO DISMISS THIRD PARTY
COMPLAINT**
[Fed. R. Civ. Proc. 12(b)(6)]

Date: October 10, 2008

Time: 9:00 a.m.

Dept: 7, 19th Floor

Honorable Maxine M. Chesney

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**NOTICE OF DEFENDANT SANTA ROSA MEMORIAL HOSPITAL'S AMENDED
MOTION TO DISMISS THIRD PARTY COMPLAINT [Fed. R. Civ. Proc. 12(b)(6)]**

PLEASE TAKE NOTICE that on October 10, 2008 at 9:00 a.m. in Courtroom 7 of the above-captioned Court, third party defendant Santa Rosa Memorial Hospital will and hereby does move this Court to dismiss the third party complaint filed by defendants pursuant to Federal Rule of Civil Procedure 12(b)(6). This motion is made on the grounds that the third party complaint fails to state facts sufficient to constitute any cause of action against third party defendant and is based on this notice, the accompanying points and authorities, the complete files and records in this case and on such other evidence and argument as may be presented at the hearing on this motion.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT
SANTA ROSA MEMORIAL HOSPITAL'S AMENDED MOTION TO DISMISS THIRD
PARTY COMPLAINT [Fed. R. Civ. Proc. 12(b)(6)]**

I. Issues Presented and Relief Sought

Pursuant to Fed. R. Civ. Proc. 12(b)(6), third party defendant Santa Rosa Memorial Hospital asks the court to dismiss the Third Party Complaint without leave to amend for failure to state facts sufficient to constitute any cause of action.

Sonoma County Sheriff's Department allegedly intentionally shot and killed a mentally ill teenager, Jeremiah Chass, in front of his family for reasons unrelated to any legitimate law enforcement purpose. They seek equitable indemnity from Santa Rosa Memorial Hospital, based on allegations that the Hospital should have treated Jeremiah the night before and that had they done so, Jeremiah would not have threatened to kill his brother the next morning and the deputies would not have been summoned.

There are a multitude of reasons why defendants are not entitled to equitable indemnity from the Hospital in this civil rights shooting death case. Defendants found no equitable indemnity case involving similar circumstances, no doubt because what defendants seek to do goes far beyond the boundaries of the law.

First, all claims are barred by the fact that the use of excessive force by Sheriff's deputies was a superseding cause that relieves the Hospital of liability. There are a number of different

1 analytical paths that compel this conclusion, both from a causation standpoint and scope of duty
2 standpoint. Second, defendants do not allege facts that would show the Hospital had any duty to
3 Jeremiah's family, which bars indemnity for the claims asserted only by the family (second
4 through fifth claims). Third, an intentional tortfeasor cannot obtain indemnity from a negligent
5 tortfeasor, and the three civil right claims (first, second and third) allege intentional or
6 deliberately indifferent action. Finally, the Hospital, which is not alleged to have any
7 involvement in running the Sheriff's Department, cannot have been the actual cause of the
8 alleged *Monell* violations, which is grounded on Sheriff's Department custom, practice and
9 policies.

10 **II. Allegations of the Complaint**

11 Plaintiffs' complaint essentially alleges that Sonoma County deputies executed a
12 mentally ill teenager, Jeremiah Chass, in front of his family while the teenager was flat on his
13 back in a van. (Complaint, ¶ 21.) Plaintiffs allege that Jeremiah's father, Mark Chass, called
14 the Sebastopol Fire Department on March 12, 2007 for EMT medical assistance to transport
15 Jeremiah to the hospital, but the call was routed to the Sonoma County Sheriff's Department,
16 which dispatched Deputies Misita and Ryan to the Chass home. (*Id.*, ¶ 12.) Plaintiffs contend
17 that, although Jeremiah had holed up in the family's minivan with a wood-working tool and had
18 been "making irrational statements," his parents had physically restrained him before the
19 deputies arrived. (*Id.*, ¶ 16.) On arrival, the deputies pepper sprayed Jeremiah, struck him with a
20 baton, put him in a head lock and then discharged their weapons at him, killing him. (*Id.*, ¶¶ 19
21 and 21.)

22 The complaint sets out two civil rights claims (42 U.S.C. § 1983) against the deputies
23 alleging the use of excessive force and one civil rights claim against the County, alleging the
24 failure to train deputies to handle encounters with mentally ill persons and/or ratification of the
25 misconduct of the deputies. (First, Second and Third Claims.) Two state law claims are asserted
26 for wrongful death and negligent infliction of emotional distress. (Fourth and Fifth Claims.)

27 **III. Allegations of the Third Party complaint**

28 Sonoma County defendants' third party complaint alleges Jeremiah had assaulted and

1 threatened to kill his brother with a knife on the morning of March 12, 2007. (Third Party
2 Complaint, ¶ 12.) When Sonoma County deputies arrived, they found Jeremiah in a “violent,
3 delusional, and homicidal state, threatening to kill his brother, and armed with a knife.” (*Ibid.*)
4 They contend they justifiably used deadly force against Jeremiah “in response to the threat of
5 great bodily harm or death to themselves and others.” (*Ibid.*)

6 Defendants claim the right to equitable indemnity against third party defendant Santa
7 Rosa Memorial Hospital (“Hospital”). They allege that the evening before the shooting
8 decedent’s mother, Yvette Chass, called the Hospital and, speaking to an intake coordinator for
9 the acute psychiatric unit, reported that Jeremiah said he and his mother would die that night at
10 1:00 a.m. (Third Party Complaint, ¶¶ 3-4.) Mrs. Chass asked the intake coordinator to speak
11 with Dr. Prokopis, “a family friend and psychologist,” regarding Jeremiah, and the intake
12 coordinator did so. (*Id.*, ¶¶ 4-5.) Dr. Prokopis allegedly told the intake coordinator he believed
13 Jeremiah needed “emergency care and an immediate psychological assessment.” (*Id.*, ¶ 5.)

14 Defendants allege the intake coordinator told both Mrs. Chass and Dr. Prokopis that they
15 should wait until the morning to have Jeremiah evaluated and that if they brought him into the
16 emergency room that night, he would likely not be seen. (*Id.*, ¶ 6.) Allegedly as a result of this
17 conversation, Mrs. Chass did not take Jeremiah to the emergency room that night. (*Id.*, ¶ 7.) It is
18 not alleged she called 911, contacted the fire or sheriff’s department or sought other assistance
19 for Jeremiah until the following morning.

20 Based on these allegations defendants assert the Hospital violated a duty to provide
21 emergency medical care for Jeremiah pursuant to California Health & Safety Code § 1317. They
22 contend the violation of this alleged duty, as well as the alleged failure to train the intake
23 coordinator properly, constituted medical malpractice. (*Id.*, ¶¶ 9-11, 15-16.) They assert that if
24 Jeremiah had been taken to the emergency room, he “would have received treatment and/or
25 services that would have prevented his further mental decline.” (*Id.*, ¶ 13.) Consequently, he
26 “would not have assaulted his brother, or threatened to kill his brother on the morning of March
27 12, 2007.” (*Id.*, ¶ 13.) Defendants maintain that Jeremiah’s violent behavior on March 12 was
28 foreseeable as was the use of force against him by sheriff’s deputies. (*Ibid.*)

IV. Argument

A. The Use of Excessive Force Was a Superseding Cause

Leaving aside for the moment whether Health & Safety Code § 1317 even applies in this case, the alleged use of excessive force by the sheriff's deputies is a superseding cause that relieves the Hospital from liability even if the Hospital's alleged negligence was a substantial factor in causing the injuries alleged by plaintiffs.

In § 1983 actions, the Ninth Circuit looks to "[t]raditional tort law" to define "intervening causes that break the chain of proximate causation." *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 837 (9th Cir. 1996). California applies the rules set out in the Restatement Second of Torts regarding superseding cause. *Stewart v. Cox*, 55 Cal.2d 857, 864 (1961). "A superseding cause is an act of a third person or other force which by its intervention prevents the actor from being liable for harm to another which his antecedent negligence is a substantial factor in bringing about." Restatement 2nd, Torts, § 440. A superseding cause relieves the actor from liability whether or not that person's negligence was a substantial factor in bringing about the harm. *Id.*, § 440, com. b.

Witkin extracts the following rule from the principles set out in the Restatement: "Where, subsequent to the defendant's negligent act, an independent intervening force actively operates to produce the injury, the chain of causation may be broken. It is usually said that if the risk of injury might have been reasonably foreseen, the defendant is liable, but that if the independent intervening act is highly unusual or extraordinary, not reasonably likely to happen and hence not foreseeable, it is a superseding cause, and the defendant is not liable." 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 975, p. 366.

1. Whether a Duty Exists Is a Question of Law

Whether an intervening act is a superseding cause as a matter of policy is a question of law for the Court to decide. "[A] court's task--in determining 'duty'--is not to decide whether a particular plaintiff's injury was reasonably foreseeable in light of a particular defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be

imposed on the negligent party." *Ballard v. Uribe*, 41 Cal. 3d 564, 572, n. 6 (1986). "It is the exclusive function of the court to declare the existence or non-existence of rules which restrict the actor's responsibility short of making him liable for harm which his negligent conduct is a substantial factor in bringing about, and to determine the circumstances to which such rules are applicable." Rest.2nd, Torts, § 453. Both duty as well as foreseeability, as a factor in finding duty, are questions of law. *Juarez v. Boy Scouts of America, Inc.*, 81 Cal.App.4th 377, 401 (2000) [duty]; *Ann M. v. Pacific Plaza Shopping Center*, 6 Cal.4th 666, 678, 863 P.2d 207 (1993) [foreseeability]. "[T]he existence and extent of a defendant's liability is a question of law and social policy." *Brewer v. Teano*, 40 Cal.App.4th 1024, 1035 (1995).

The outer bounds of legal causation are for the Court to decide because the existence of legal cause "essentially depends upon whether the policy of the law will extend the responsibility for the conduct to the consequences which have in fact occurred." *Sundance Land Land Corp. v. Community First Federal Sav. & Loan Assoc.*, 840 F.2d 653, 663 (9th Cir. 1988) (internal quotations omitted). See also *Blue Shield of Virginia v. McCready*, 457 U.S. 465, 478 n.13 (1982). Where an intervening act is not reasonably foreseeable, the defendant's conduct is not deemed the "legal" or proximate cause. *Hardison v. Bushnell*, 18 Cal.App.4th 22, 26 (1993).

2. Considerations in Determining Whether an Intervening Force Is Superseding

Section 442 of the Restatement sets out six considerations that are important in determining whether an intervening force is superseding. These are: "(a) the fact that its intervention brings about harm different in kind from that which would otherwise have resulted from the actor's negligence; (b) the fact that its operation or the consequences thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation; (c) the fact that the intervening force is operating independently of any situation created by the actor's negligence, or, on the other hand, is or is not a normal result of such a situation; (d) the fact that the operation of the intervening force is due to a third person's act or to his failure to act; (e) the fact that the intervening force is due to an act of a third person which is wrongful toward the other and as such subjects the third person to liability to him; (f) the degree of culpability of a wrongful act of a third person which sets the intervening force in

1 motion.”

2 The Court in *Martinez v. Vintage Petroleum, Inc.*, 68 Cal.App.4th 695 (1998) distilled
3 these precepts into three tests for determining whether an intervening cause constituted a
4 superseding cause. Intervening negligence will supersede if any of the three tests applies. *Id.* at
5 701. The first test applied the general rule that "superseding cause will be found if both the
6 intervening negligent act and the result are unforeseeable." *Ibid.* The second test provided that
7 "foreseeable intervening ordinary negligence will not supersede but such negligence, if 'highly
8 extraordinary,' will supersede." *Ibid.* Under the third test "a normal, but negligent, intervening
9 response will not supersede but an extraordinarily negligent response will supersede." *Ibid.* In
10 addition, "among other factors important in determining whether an intervening force is
11 superseding are 'the fact that the intervening force is due to a third person's act or failure to act,
12 the wrongful act of a third person, and the degree of culpability of the third person.'" *Ibid.*, citing
13 to *Brewer v. Teano*, *supra*, 40 Cal.App.4th at 1031, fn. 3, and Rest.2d Torts, § 442, subds. (d),
14 (e), (f).)

15 In *Brewer v. Teano*, *supra*, 40 Cal.App.4th 1024, the Court based its finding of
16 superseding cause on the first three Restatement considerations. Therein, a driver, William
17 Teano, negligently, recklessly and repeatedly drove his car into a car driven by plaintiff. Fearing
18 he would be assaulted by Teano if he pulled over, plaintiff left the scene. Subsequently, he was
19 arrested and prosecuted for felony hit-and-run. Plaintiff sued Teano's estate for damages for his
20 prosecution, among other things. *Id.* at 1027-1028.

21 The trial court sustained a demurrer to this claim, and the appellate court affirmed. The
22 Court explained:

23 As the Restatement and California cases instruct us, we look at what happened
24 with the benefit of hindsight. Even from that perspective, it cannot be said that the
25 intervening force consisting of the prosecution of formal criminal charges against
26 plaintiff was "foreseeable" from Teano's conduct, however characterized. The
27 harm from that proceeding was different in kind from that which may be expected
28 to result from the kind of conduct alleged in this case. (§ 442, com. (a).) It is an
extraordinary rather than a normal result of Teano's act. (*Id.*, com. (b).) The
decision of prosecutors to file against plaintiff, and of the magistrate or grand jury
to hold him to answer felony charges, operated independently from anything that

1 Teano did; they cannot be described as a normal result of his negligent driving.
 2 (*Id.*, com. (c).) Whether Teano's conduct was negligent or deliberate, it would be
 3 "an unwarranted extension of liability" [citation] to hold that Teano's estate is
 4 liable for these remote official acts of independent public officers. We conclude
 5 that, as a matter of law, plaintiff is not entitled to recover for the damages he
 6 suffered as a result of the filing of criminal charges and the subsequent
 7 proceedings in the criminal case.

Brewer v. Teano, 40 Cal.App.4th at 1037.

8 Here, too, the alleged use of excessive force by peace officers was not a foreseeable
 9 result of the Hospital's alleged advice to Mrs. Chass. "The virtually unanimous agreement that
 10 the liability must be limited to cover only those intervening causes which lie within the scope of
 11 foreseeable risk, or have at least some reasonable connection with it, is based upon a recognition
 12 of the fact that the independent causes which may intervene to change the situation created by
 13 the defendant are infinite, and that as a practical matter responsibility simply cannot be carried to
 14 such lengths." *Premo v. Grigg* 237 Cal.App.2d 192, 197 (1965).

14 3. The General Risk that Jeremiah Might Encounter the Police Is Highly Speculative

15 The California Supreme Court held that when deciding whether an intervening force
 16 supersedes, the inquiry is not whether the original actor's negligence created a general risk of
 17 harm; rather, the focus is on the kind of harm incurred where the intervening act is negligent and
 18 on the mechanism of the harm where the intervening act is criminal. *Wiener v. Southcoast*
 19 *Childcare Centers, Inc.*, 32 Cal.4th 1138, 1148, 1150 (2004). In *Wiener*, a man intentionally
 20 drove his car through a chain link fence surrounding a daycare center and into a group of
 21 children on the playground there. *Id.* at 1143. Plaintiff sued the daycare center alleging that
 22 defendants knew the fence, which was three to four feet from a busy roadway, was inadequate to
 23 prevent cars from going through it and, based on prior traffic accidents on the roadway in front
 24 of the center, it was foreseeable that a vehicle could leave the road and strike the fence. *Id.* at
 25 1144. The California Supreme Court upheld the trial court's grant of summary judgment. It
 26 found that in reversing the trial court's ruling, the Court of Appeal applied the wrong standard
 27 because it looked at whether the playground was "generally vulnerable to errant traffic." *Id.* at
 28 1148.

1 This focus was present also in *Federico v. Superior Court*, 59 Cal.App.4th 1207 (1997).
2 Therein, the defendant hired a convicted sex offender who had molested underage boys to
3 supervise to supervise student training at a hairstyling college. *Id.* at 1211.) His job duties
4 involved no regular contact with minors, but he had incidental contact with children who were
5 getting their hair cut or visiting their parents who were students at the school. *Id.* at 1211-1212,
6 1216.) The employee got permission from a student at the school to take her son on a Sunday
7 outing, after which he sodomized the child. *Id.* at 1212.

8 The court held that even if the defendant should have known of the employee's prior
9 convictions and "could have foreseen that [the employee's] duties at the hairstyling school would
10 entail some degree of contact" with underage males, "as a matter of law, hiring [the employee]
11 did not constitute a breach of defendant's limited duty to exercise reasonable care" in selecting
12 employees. *Id.* at 1213. Because the employee's prior convictions "did not involve students or
13 customers of the hairdressing establishments" where he had worked, and because there was no
14 particular connection between the employee's abnormal sexual interest in children and his work,
15 nothing in his history would have indicated to defendant that he "posed a threat of harm to
16 minors he might encounter in the course of his work." *Id.* at 1214-1215. "[A]n employer's
17 liability must be determined in the context of the specific duties the work entails." *Id.* at 1215.
18 While it was "foreseeable [the employee] would come into contact with young males" at work,
19 such "unavoidable encounters" could not support a finding of negligent hiring. *Ibid.* The court
20 also rejected the plaintiff's claim for negligent supervision because the defendant had no reason
21 to know or suspect that the employee had engaged in "inappropriate behavior on the job"
22 involving minors prior to the incident in the case. *Id.* at 1216.

23 The general risk that Jeremiah might encounter the police because of his behavior is not
24 the proper focus here. Nonetheless, the speculative nature of that general risk adds to the
25 remoteness between the Hospital's alleged advice and the intervening force and bears some
26 discussion. *Saelzler v. Advanced Group 400*, 25 Cal.4th 763, 775-776 (2001) [mere possibility
27 of causation is insufficient, because causation cannot be based upon speculation and conjecture].
28 Defendants allege that Jeremiah would not have assaulted his brother had he received treatment

1 and, thus, would not have encountered the police. This is nothing more than an attempt to
2 elevate clairvoyant power into legal duty.

3 Two out-of-circuit cases are instructive and in keeping with Ninth Circuit law on
4 causation. Both cases involved § 1983 actions brought against police agencies for failing to
5 intervene under circumstances roughly analogous to those in the case at bar. Both cases found
6 there was no causation as a matter of law.

7 In *Ricketts v. City of Columbia Missouri*, 36 F.3d 775 (8th Cir. 1994), an estranged
8 husband sexually assaulted his wife and murdered his wife's mother. The wife and decedent's
9 husband brought a § 1983 action against the police, alleging that the police had actual and
10 personal knowledge of numerous violent threats by the husband against the wife but failed to
11 arrest him during any of the many police responses to the husband's violations of a TRO the wife
12 had obtained. *Id.* at 777-778. The Eighth Circuit rejected the argument that this failure to arrest
13 caused plaintiff injuries. In so holding, the court reasoned that "[t]o find that the injuries caused
14 by Sunny's violent acts of sexual assault and murder would have been avoided had Sunny been
15 arrested for the prior harassment would be an excess in pure speculation, even though it would
16 be "logical to assume that continued official tolerance of repeated misconduct facilitates similar
17 unlawful actions in the future." *Id.* at 780. [Internal citations omitted.]

18 In *Rodriguez-Cirilo v. Garcia*, 115 F.3d 50 (1st Cir. 1997), the plaintiffs sued police
19 officers after one of the plaintiffs was stabbed by Francisco, his mentally ill and violent brother.
20 Plaintiffs alleged the police failed to arrest Francisco pursuant to a mandatory temporary
21 detention order, notwithstanding Francisco's threats to stab people and the family's efforts to
22 convince the officers that Francisco was dangerous. *Id.* at 51. To establish causation, the
23 plaintiffs relied upon the declaration of a psychologist stating that had Francisco been detained
24 when police had a duty to detain him, he would have received effective treatment which would
25 have prevented the stabbing. *Id.* at 53. The First Circuit held that the declaration of the
26 psychologist did not constitute competent evidence of causation. *Ibid.*

27 The decisions in *Ricketts* and *Rodriguez-Cirilo* make clear that a mere possibility an actor
28 could have prevented a third party's act of violence does not create the direct causal link that is

1 required to causation. Although there is no equally analogous Ninth Circuit decision, the
 2 reasoning employed by the First and Eighth Circuits is consistent with Ninth Circuit case law on
 3 the issue of indirect causation. See *Huffman v. County of Los Angeles*, 147 F.3d 1054 (9th Cir.
 4 1998); *Van Ort v. Estate of Stanewich*, *supra*, 92 F.3d at 837.

5 In *Lopez v. McDonald's Corp.*, 193 Cal.App.3d 495 (1987), a fast food restaurant's
 6 failure to have a security guard present was not a substantial factor in the deaths of persons killed
 7 by a mentally ill gunman in the restaurant. The Court observed that the argument that the use of
 8 security at the restaurant would have deterred the murderer and prevented the massacre
 9 "constitute[d] a classic example of plaintiffs establishing "abstract negligence...." *Id.* at 515-516.

10 4. The Use of Excessive Force Was Unforeseeable and/or Extraordinarily Negligent

11 The Hospital's alleged advice to Mrs. Chass was closer in time to Jeremiah's alleged
 12 assault on his brother than the officers' failures to act in *Ricketts* or *Rodriguez-Cirilo*, but that
 13 does not create a causal link in this case. The alleged advice to wait until morning to bring
 14 Jeremiah to the emergency room was not the mechanism of harm here, nor did it foreseeably
 15 lead to the actual harm suffered.

16 Unsurprisingly, there is no allegation in the Third Party Complaint that the Sheriff's
 17 Department's propensity to use excessive force against mentally ill persons was so well-known
 18 that the Hospital should have expected excessive force would be used. Numerous cases compel
 19 the conclusion that the alleged use of excessive force by the deputies was a superseding cause
 20 that cuts off the Hospital's liability.

21 A review of the allegations of the complaint is an appropriate starting place. The First
 22 Claim asserts that the deputies violated Jeremiah's Fourth Amendment rights by using excessive
 23 force. Plaintiffs allege that Deputies Misita and Ryan "acted in reckless and callous disregard for
 24 the constitutional rights of decedent, and with willful oppression and malice." (Complaint, ¶ 35.)
 25 Plaintiffs seek both general and punitive damages against the officers on this claim.

26 Plaintiffs' Second Claim is for violation of Jeremiah's family's substantive due process
 27 right to familial association. In order to state such a claim, plaintiffs must prove that the officers
 28 acted with an "intent to harm" unrelated to any legitimate law enforcement purpose. *County of*

1 *Sacramento v. Lewis*, 523 U.S. 833, 854 (1998). "[O]nly the most egregious official conduct can
 2 be said to be arbitrary in a constitutional sense." *Id.* at p. 846 (internal quotations and citation
 3 omitted). "Liability for negligently inflicted harm is categorically beneath the threshold of
 4 constitutional due process." *Id.* at 849, (1998) (citations omitted). See also *Wood v.*
 5 *Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990) (even gross negligence is insufficient to
 6 establish a constitutional violation).

7 The Third Claim, asserted against the County, alleges the County was deliberately
 8 indifferent to the civil rights of the plaintiffs due to prior knowledge of the deputies' unjustified
 9 use of deadly force against the mentally ill, the failure to properly train, supervise and discipline
 10 the deputies despite that knowledge and after-the-fact ratification of the deputies' actions. These
 11 practices constituted a de facto policy or custom that was the moving force behind the alleged
 12 constitutional violations. (Complaint, ¶¶ 25 and 42.)

13 The first two claims allege conduct that could constitute criminal acts by the deputies.
 14 The use of excessive force may constitute a battery or an attempted assault. An assault "is an
 15 unlawful attempt, coupled with a present ability, to commit a violent injury on the person of
 16 another. Calif. Penal Code § 240. "A battery is any willful and unlawful use of force or violence
 17 upon the person of another." Calif. Penal Code § 242. And under the substantive due process
 18 standard discussed above, killing someone unrelated to any legitimate law enforcement purpose
 19 is essentially an allegation of manslaughter. Calif. Penal Code § 192(a): "Manslaughter is the
 20 unlawful killing of a human being without malice." The Third Claim alleges the County's
 21 deliberate indifference to plaintiffs' constitutional rights was a moving force behind the violation
 22 of those rights. The only two claims - the Fourth Claim for Wrongful Death and the Fifth Claim
 23 for Negligent Infliction of Emotional Distress - are theoretically based on alleged negligent
 24 conduct by the deputies, and even those claims are necessarily based on the shooting of
 25 Jeremiah, clearly an intentional act, whether wrongful or not.

26 California cases require a heightened degree of foreseeability where the intervening force
 27 is not merely negligent. See *Wiener, supra*, at pp. 1149-1150. See also *Juarez v. Boy Scouts of*
 28 *America, Inc.* (2000) 81 Cal.App.4th 377, 394. The cases finding criminal acts of third parties to

1 be superseding acts abound. In addition to those discussed above, in *Gonzalez v. Derrington*, 56
2 Cal.2d 130 (1961), the California Supreme Court held that a defendant who negligently sold
3 gasoline in an open case to a person who used it to set fire to an occupied bar was not liable as
4 the act of the arsonist was superseding. *Id.* at 133.

5 Even negligent intervening acts, however, break the chain of causation where the
6 negligence is unforeseeable, or highly extraordinary even if foreseeable. (Rest.2d, Torts, § 442.)
7 In *Schrimsher v. Bryson*, 58 Cal.App.3d 660 (1976), a highway patrol officer, investigating an
8 accident in which one of the drivers was under the influence of alcohol, ordered the drunk driver
9 to pull his car off the road. Another car, driven by another drunk driver, veered off the road and
10 struck the first drunk driver's car, propelling it into the officer. The officer sued the first drunk
11 driver. The Court held "[i]t would be an unwarranted extension of liability to hold that when a
12 traffic officer, who is issuing a citation, investigating an accident or performing other of his
13 duties, is injured as a result of the negligence or criminal conduct of one person, liability may be
14 imposed on the original traffic violator whose conduct brought the officer to the scene." *Id.* at
15 665. [Emphasis supplied.] The Court further stated that the action of the second drunk driver
16 "could not reasonably have been anticipated by defendant at the time of his initial negligence and
17 as a matter of law the chain of causation was broken." *Id.* at 664.

18 In *Martinez v. Vintage Petroleum*, 68 Cal.App.4th 695 (1998), plaintiff's coworkers,
19 employees of independent contractor, cut into a pressurized gas line, causing the pipe to burst
20 and injuring the plaintiff. The Court held the negligence of the coworkers was a superseding
21 cause, relieving the employer of liability, because it was both extraordinarily negligent and
22 dangerous. *Id.* at 701.

23 In *Premo v. Grigg*, 237 Cal.App.2d 192, 194 (1965), a dishwasher and janitor at a pizza
24 parlor brought his four-year-old daughter to work while he cleaned the premises. The employer
25 knew of this practice and tacitly allowed it. Preparatory to mopping the floor, the father filled a
26 bucket with hot water and carried it into the dining room where he left it unattended. A few
27 minutes later, he heard his daughter scream and found her immersed in the bucket. The child
28 died from the burns received from the scalding water. The Court held the negligent acts of the

1 father constituted a superseding cause as a matter of law, relieving the employer from liability.
 2 *Id.* at 199.

3 A lumber company was insulated from liability in *Stultz v. Benson Lumber Co.*, 6 Cal.2d
 4 688 (1936) even though the company supplied wood too defective to be used for scaffolding
 5 with the knowledge it would be so used. The employer's decision to use the wood, the defects of
 6 which were obvious, was an intervening cause which broke the chain of causation. *Id.* at 695.

7 5. The Duty Imposed on the Hospital Was not Designed to Protect Against the
 8 Harm Suffered

9 The Restatement instructs that whether the result of the actor's conduct is highly
 10 extraordinary and, thus, superseding, involves "determining whether the duty imposed on the
 11 actor was designed to protect the one harmed from the risk of harm from the hazard in question.
 12 However, courts frequently treat such problems as problems of causation." Rest.2d, Torts,
 13 §4352(2), com. c. [Internal citations omitted.] Looking at this case from the standpoint of the
 14 duty imposed on the hospital rather than causation, it is clear that the harm caused to Jeremiah
 15 and his family by the deputies was not one the hospital's duty was designed to protect against.
 16 The basis of the alleged duty to treat Jeremiah is asserted to be California Health & Safety Code
 17 § 1317(a), which provides:

18
 19 Emergency services and care shall be provided to any person requesting the
 20 services or care, or for whom services or care is requested, for any condition in
 21 which the person is in danger of loss of life, or serious injury or illness, at any
 22 health facility licensed under this chapter that maintains and operates an
 23 emergency department to provide emergency services to the public when the
 24 health facility has appropriate facilities and qualified personnel available to
 25 provide the services or care.

26 The Legislature enacted § 1317, to accomplish three purposes. One of the original
 27 purposes of the statute, formerly § 1426, was to address the problem of patients being turned
 28 away from emergency rooms because they had no health insurance. Subdivision (d) of § 1317
 provides in pertinent part: "Emergency services and care shall be rendered without first
 questioning the patient or any other person as to his or her ability to pay therefor." A second

1 purpose was to provide immunity to emergency health care providers in certain circumstances.
 2 See, e.g., *Lowry v. Henry Mayo Newhall Mem'l Hosp.*, 185 Cal.App.3d 188 (1986); Health &
 3 Safety Code § 1317(c), (f) and (g).

4 Finally, the Legislature also found the cost of providing emergency medical services was
 5 greater than the cost of providing other medical services. "If allowed to continue, these higher
 6 costs and lower reimbursements could force many physicians to reduce the quality and
 7 availability of emergency medical services, to the detriment of Californians." Stats 1987, ch.
 8 1240. Accordingly, "by enacting this legislation, the Legislature is providing a means of partial
 9 funding for these vital services. Further, it is the intent of the Legislature that the source of
 10 funding of emergency medical services be related to the incident of emergencies requiring
 11 immediate medical care. Thus, this act will levy an additional penalty assessment on traffic and
 12 other fines. In this way, the costs of emergency medical services shall be borne to a degree by
 13 those who have a relationship to creating the emergencies." Stats 1987, ch. 1240.

14 There is no allegation that the intake coordinator advised Mrs. Chass that Jeremiah
 15 probably would not be seen in the emergency room due to a lack of insurance. To the contrary,
 16 the Third Party Complaint alleges that the coordinator advised Mrs. Chass to bring Jeremiah in
 17 the following morning. The duty imposed on hospitals to provide emergency services regardless
 18 of insurance coverage was not designed to protect against encountering peace officers who
 19 would use excessive force. Thus, this analysis also leads to the conclusion that the harm
 20 encountered was extraordinary.

21 **B. Defendants Do Not Allege any Basis for a Duty to Jeremiah's Family**

22 Section 1317 provides only that hospitals that offer emergency medical care must provide
 23 such care to persons requesting it or for whom such care is requested. It does not establish any
 24 duty to the relatives of such persons. The Second, Fourth and Fifth claims are brought on behalf
 25 of Jeremiah's parents and brother. On its face, § 1317 does not reach such persons and there is
 26 no decisional law extending the duty encapsulated in § 1317 to such persons.

27 Common law duty precepts do not support liability on the part of the Hospital to the
 28 Chass family either, even if pled. In *Burgess v. Superior Court*, 2 Cal.4th 1064 (1992), the

1 California Supreme Court, analyzing the “direct victim” branch of negligent infliction of
2 emotional distress held that a physician-patient relationship between the plaintiff and the health
3 care provider was critical to “direct victim” liability in the medical context. *Id.* at 1078, fn.8.
4 Earlier, in *Schwarz v. Regents of University of California*, 226 Cal.App.3d 149 (1990), the Court
5 of Appeal denied recovery for emotional distress to a father who alleged he was the direct victim
6 of a psychotherapist whom he had retained to treat his son and who helped the mother take the
7 son out of the country. Because the Court found only the son was the therapist's patient, even
8 though the plaintiff father had participated in counseling sessions, it held the father could not
9 recover for negligent infliction of emotional distress. *Id.* at 161 163. There is no allegation that
10 Jeremiah's family members were patients of the Hospital at all, let alone for any treatment at
11 issue in this lawsuit. Therefore, the Hospital did not owe them a legal duty. In addition, the
12 contemporaneous awareness of an injury producing event is absent here and would bar a
13 “bystander” negligent infliction claim. *Thing v. La Chusa* (1989) 48 Cal.3d 644, 667-668 -
14 bystander must be “present at the scene of the injury producing event at the time it occurs and
15 then aware that it is causing injury to the victim.” At the time Mrs. Chass spoke to the intake
16 coordinator, she could not have been “then aware” that the coordinator's alleged advice was
17 producing injury since Jeremiah suffered no physical injury until he came into contact with
18 sheriff's deputies.

19 Also instructive is *Meighan v. Shore*, 34 Cal.App.4th 1025 (1995), wherein a wife,
20 believing her husband to be having a heart attack, implored the hospital to call a cardiologist who
21 did not show up for several hours after being called. As time passed, the wife, who had been
22 trained as a nurse, and who knew that certain medication was only effective during the early
23 hours of a heart attack, became hysterical and demanded that the nurses get a cardiologist in
24 immediately to examine her husband. When a cardiologist finally arrived, he wrongly
25 determined that husband was not having heart attack and, accordingly, did not administer
26 medication that might have prevented damage to the heart. The court found the wife had no
27 viable bystander cause of action because the facts did not “satisfy the witness and awareness
28 requirement of *Thing*.” *Id.* at 1045.

Medical professionals normally owe no duty of care to third parties who might suffer reasonably foreseeable harm as a result of medical negligence. See *Calderon v. Glick* (2005) 131 Cal.App.4th 224, 233 [affirming order granting summary judgment in favor of psychotherapist in action for wrongful death and professional negligence where psychotherapist's patient shot five members of former girlfriend's family]. Because the Hospital here is neither a concurrent nor a joint tortfeasor with respect to plaintiffs' injuries, defendants cannot assert a claim for equitable indemnity for the Second, Fourth, or Fifth claims. *Munoz v. Davis*, 141 Cal. App. 3d 420, 425 (1983) ["Whatever confusion may have existed in the case law of equitable indemnity [citation], one point stands clear: there can be no indemnity without liability. In other words, unless the prospective indemnitor and indemnitee are jointly and severally liable to the plaintiff there is no basis for indemnity."]; *Seamen's Bank v. Superior Court*, 190 Cal. App. 3d 1485, 1491 (1987) [applying *Munoz v. Davis*, *supra*, 141 Cal. App. 3d 420, to reject claim for equitable indemnity].

C. An Intentional Tortfeasor May Not Seek Equitable Indemnity from a Negligent Tortfeasor

"The right of what may be termed equitable indemnity [citation] enures to a person who, without active fault on his part, has been compelled by reason of some legal obligation to pay damages occasioned by the initial and active negligence of another. This involves the equitable considerations of primary and secondary liability, or, to put it differently, concepts of active and passive conduct." *S.F. Examiner Division v. Sweat*, 248 Cal.App.2d 493, 497 (1967). [Emphasis added.]

A tortfeasor guilty of an intentional tort may not seek indemnification for any amount of the judgment from a negligent tortfeasor. *Leko v. Cornerstone Bldg. Inspection Service*, 86 Cal.App.4th 1109, 1120 (2001) [cross-complaint for equitable indemnity proper only insofar as it seeks relief from liability for negligence or other nonintentional torts]; *Weidenfeller v. Star & Garter*, 1 Cal.App.4th 1, 6-7 (1991) ["intentional actor cannot rely on someone else's negligence to shift responsibility for his or her own conduct"]; see *PPG Industries, Inc. v. Transamerica Ins. Co.*, 20 Cal.4th 310, 319 (1999) [recognizing strong public policy against permitting liability for

intentional wrongdoing to be offset or reduced by the negligence of another]; see also Calif. Code Civ. Proc., § 875(d) ["There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person."].

As previously noted only two claims ostensibly involve negligence here. Defendants cannot seek to shift liability for their conduct on the civil rights claims - which conduct would be analogous to several crimes if true - to shift responsibility onto the Hospital, which is only alleged to be negligent. As to the two state law claims, defendants are not entitled to indemnity because they have not alleged any legally cognizable duty on the part of the Hospital to the Chass family, as argued above.

D. The Hospital Cannot Be the Actual Cause of the Alleged *Monell* Violations

Plaintiff's Third Claim is based on *Monell v. Department of Social Services*, 436 U.S. 658, 691 (1978), which held that a local government entity may not be held responsible for the acts of its employees under a respondeat superior theory of liability. Rather, to state a claim for municipal or county liability, a plaintiff must allege that a policy or custom of the local government entity was a moving force behind the alleged constitutional deprivation. *City of Canton, Ohio, v. Harris*, 489 U.S. 378, 385 (1989).

The *Monell* claim here is based on allegations that the Sheriff's Department failed to train, supervise and discipline the two deputies and other deputies despite prior knowledge of their use of excessive force against mentally ill individuals. Alternatively or additionally, the *Monell* claim is based on ratification of the conduct after the event. Whatever the legal impact of the Hospital's alleged conduct on the night of March 11, it cannot have been the actual cause of the Sheriff's Department's failure to train, supervise or discipline its officers prior to their encounter with Jeremiah on March 12. Nor can the Hospital's conduct have been the actual cause of the Department's alleged subsequent ratification of the deputies' actions.

Actual cause exists where a defendant's conduct was "a substantial factor in bringing about the injury." *Mitchell v. Gonzales*, 54 Cal. 3d 1041, 1049 (1991). Actual cause is often declared to be an issue of fact; however, it may be decided as a question of law if, under undisputed facts, reasonable minds would reach but one conclusion. *Kurini v. Hanna &*

1 *Morton*, 55 Cal.App.4th 853, 864 (1997); *Carson Harbor Vill., Ltd. v. Unocal Corp.*, 287
2 F.Supp.2d 1118, 1200 (C.D.Cal. 2003). Reasonable minds could not differ here. The Hospital is
3 not alleged to have played any role whatsoever in the prior training, supervision, or discipline of
4 deputies regarding their use of force against mentally ill individuals. Nor is the Hospital alleged
5 to have played any role in the Sheriff's Department's subsequent ratification of the deputies'
6 actions during their encounter with Jeremiah. Actual cause does not exist for the Third Claim as
7 a matter of law.

8 **V. CONCLUSION**

9 For all of the foregoing reasons, Santa Rosa Memorial Hospital respectfully requests that
10 the Court dismiss defendant's Third Party Complaint without leave to amend and for such other
11 and further relief as the Court deems appropriate.

12
13 Dated: September 3, 2008

TATE & ASSOCIATES

14
15 By 

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